

IP 92-0006-CR 1 T/F US v Turner
Magistrate Kennard P. Foster

Signed on 6/26/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 92-06-CR-01 (T/F)
)	
JOHN TURNER,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on December 20, 2005, designating the Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on December 19, 2005, and the Supplemental Petition for Warrant or Summons for Offender Under Supervision, filed with the Court on February 2, 2006, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings were held on June 26, 2006, in accordance with Title 18 U.S.C. §3583 and Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Turner appeared in person and with his appointed counsel, William Marsh, the Indiana Federal Community Defender; the government appeared by Susan Dowd, Assistant United States Attorney; and Mike Kendall, U. S. Parole and Probation officer, appeared and participated. .

The Court conducted the following procedures in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That William Marsh, the Indiana Federal Defender, was appointed to represent Mr. Turner in regard to the pending Petition for Revocation of Supervised Release, filed December 19, 2005, and the Supplemental Petition for Revocation of Supervised Release, filed February 2, 2006.

2. A copy of the Petition for Revocation of Supervised Release and Supplemental Petition for Revocation of Supervised Release were provided to Mr. Turner and his counsel who informed the Court that they had read and understood the specifications of violations and waived further reading thereof.

3. Mr. Turner was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of her supervised release contained in the pending Petition and Supplemental Petition.

4. Mr. Turner was informed he would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Turner was informed he had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. Mr. Turner was informed that if the preliminary hearing resulted in a finding of probable cause that Mr. Turner had violated an alleged condition or conditions of his supervised release set forth in the Petitions, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on December 20, 2005.

7. Mr. Marsh stated that John Turner desired to waive the preliminary examination and proceed to the revocation phase of the proceedings this date. Mr. Turner then waived the preliminary hearing in writing and was held to answer.

8. Mr. Turner, by counsel, stipulated that he committed the violations of specifications as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed December 19, 2005, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substances, or paraphernalia related to such substances, except as prescribed by a physician.”</p> <p>Mr. Turner tested positive for marijuana on August 26, 2005; cocaine on October 4, 2005; marijuana on October 12, 2005; and marijuana on November 24, 2005. The offender also failed to submit to urine tests as ordered on October 30, November 1, 3 and 5, 2005. Mr. Turner admitted to this officer he was using drugs.</p>
2	<p>“The defendant shall reside for a period of 4 months at a community corrections center as directed by the probation officer and shall observe the rules of that facility.”</p> <p>On December 14, 2005, Mr. Turner was given a personal hygiene pass by staff at the Volunteers of America. The offender did not return and his whereabouts is unknown.</p>

The Court placed Mr. Turner under oath and directly inquired of him whether he admitted the violations of the specifications of his supervised release set forth above in the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on December 19, 2005 as set forth above. Mr. Turner stated that he admitted the above violations. The government moved to dismiss violations of the specifications number 3, 4 and 5 of the Supplemental Petition for Warrant or Summons for Offender Under Supervision, filed February 2, 2006, and the Court dismissed same. The Court now finds there is a basis in fact for his admissions and accepts same.

Counsel for the government stipulated the following:

(1) Mr. Turner has a relevant criminal history category of VI, U.S.S.G. §7B1.4(a).

(2) The most serious grade of violation committed by Mr. Turner constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).

(3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Mr. Turner is 21-24 months.

(4) The parties did not agree on the appropriate disposition of the case.

9. The defendant and his attorney made allocution as to disposition of the case. The government submitted no additional evidence. The government allocuted and the Court made inquiry of Mr. Kendall regarding Mr. Turner's conduct.

10. The defendant and her counsel argued for self-surrender. The government objected. The Magistrate Judge heard argument from both attorneys. The Magistrate Judge denied the same.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, John Turner, violated the above-delineated conditions in the Petition filed December 19, 2005.

Mr. Turner's supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of 21 months. The service of the sentence shall begin immediately. At the conclusion of Mr. Turner's term of confinement, he will not be subject to supervised release.

The Magistrate Judge requests that Mr. Kendall, U. S. Parole and Probation officer, prepare for submission to the Honorable John Daniel Tinder, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B) and (C), and Rule 72(b) of the *Federal*

Rules of Civil Procedure. You shall have within ten days after being served with a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of facts and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Turner's supervised release and the sentence imposed of imprisonment of 21 months in the custody of the Attorney General or his designee. Service of the sentence is to begin immediately. After Mr. Turner's release from confinement, he shall not be subject to supervised release.

IT IS SO RECOMMENDED this 26th day of June, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court

Distribution:

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